UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

ADVOCATE HEALTH & HOSPITALS CORPORATION d/b/a ADVOCATE MEDICAL GROUP

and **Case Nos. 13–CA–179223**
13–CA–184343

ILLINOIS NURSES ASSOCIATION

Lisa Friedheim-Weiss, Esq., for the General Counsel.
Douglas A. Darch, Esq., ***Jonathan E. Hitz, Esq.***, ***Jordan Faykus, Esq.***, and (on brief) ***Alexis S. Hawley, Esq.*** *(Baker & McKenzie, LLP*), of Chicago, Illinois, for the Respondent.
Stanley Eisenstein, Esq. and ***Joshua M. File, Esq.*** (*Katz, Friedman, Eagle, Eisenstein, Johnson & Bareck P.C.),* Chicago, Illinois, for the Charging Party.

DECISION

ELIZABETH M. TAFE, Administrative Law Judge. This dispute concerns whether Advocate Health and Hospitals Corporation, d/b/a Advocate Medical Group (Respondent) succeeded as the employer of a bargaining unit of advanced practice nurses (APNs) represented by the Illinois Nurses Association (Union or INA) when the Respondent began operating 56 medical clinics in Walgreens stores in the greater Chicago area that previously had been operated by the APNs' prior employer. As explained below, I find that the Respondent was a successor employer with a full complement of employees when it began operations on May 18, 2016, having filled a majority of its clinic staff in the appropriate unit with APNs from the predecessor bargaining unit. I further find that the Respondent's obligation to recognize and bargain with INA as the collective-bargaining representative of the employees was perfected when INA asserted recognition and requested bargaining. In making these determinations, I find that the bargaining unit remains an appropriate unit pursuant to Section 9(b) of the National Labor Relations Act. By failing and refusing to recognize and bargain with INA as the exclusive bargaining representative of employees in the bargaining unit pursuant to Section 9(a), the Respondent violated Section 8(a)(5) an (1) of the Act. I also find that the Respondent violated Section 8(a)(1) by interrogating an employee about her union activity and interfering with an employee's union activity.

STATEMENT OF THE CASE

On June 29, 2016, the Union filed an unfair labor practice charge against the Respondent, docketed by Region 13 of the National Labor Relations Board (Board or NLRB) as Case 13–CA–179223. On September 15, 2016, the Union filed a second charge against the Respondent, docketed as Case 13–CA–184343.

On October 14, 2016, based on an investigation into the charge filed in Case 13–CA–179223, the General Counsel, by the Regional Director for Region 13, issued a complaint and notice of hearing against the Respondent. On October 25, 2016, the General Counsel issued an order consolidating the two cases and a consolidated complaint, and on November 8, 2016, issued an amendment to the consolidated complaint, alleging violations of Section 8(a)(5) and (1) of the National Labor Relations Act (the Act). The Respondent filed timely answers to the complaint, the consolidated complaint, and the amendment to the complaint, and, before the hearing opened, an amended answer and defenses to the consolidated complaint.

A 6-day trial was conducted on November 28 to December 2, and 6, 2016, in Chicago, Illinois, at which time all parties had an opportunity to present evidence, make appropriate arguments, and to call and examine witnesses.

On the entire record,[1] including my observations of the demeanor of the witnesses,[2] and

[1] A petition for injunctive relief pursuant to Sec. 10(j) of the Act was filed in Federal District Court, which proceeds on a distinct track from this case. On August 24, 2017, an Order granting 10(j) Injunction was issued by John Z. Lee, Judge, United States District Court for the Northern District of Illinois, Eastern Division, in Case No. 17-CV-1443.

I note that the court reporter corrected the transcript due to questions raised by the parties about the status of exhibits. No motion was made to me to correct the transcript. As I understand it, the changes were made to clarify that the following exhibits were rejected: R. Exhs. 28, 31, 39, 41 and 53. This is accurate. I further clarify that: I did not rule on R. Exh 45 at the hearing, but have done so in this decision; R. Exh. 30 was admitted as evidence of what the Respondent relied on in deciding not to recognize the Union, but not for the truth of the matters asserted; and R. 35 was admitted as evidence of what was shown to employees at the 1/10/16 meeting, but not for its truth. I have not fully compared the "corrected" transcripts and exhibits to the original ones, and I have prepared this decision based on the original transcripts and exhibits in the absence of any related motion to correct the transcript.

I deny the Respondent's March 22, 2017 motion to correct and supplement the transcript, which motion proposes changes to statements made by opposing counsel, counsel for the General Counsel, on the third day of hearing, as those proposals are inaccurate by my recollection, and inconsistent with the transcript as a whole. Counsel for the Respondent's related affidavit is not credited.

[2] Credibility determinations may rely on a variety of factors, including the context of the witness' testimony, the witness' demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities, and reasonable inferences that may be drawn from the record as a whole. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 13–14 (2014); see also *Roosevelt Memorial Medical Center*, 348 NLRB 1016, 1022 (2006) (noting that an administrative law judge may draw an adverse inference from a party's failure to call a witness who may reasonably be assumed to be favorably disposed to a party, and who could reasonably be expected to corroborate its version of events, particularly when the witness is the party's agent). Credibility findings need not be all-or-nothing propositions—indeed, nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness' testimony. *Farm Fresh Co., Target One, LLC*, 361 NLRB No. 83, slip op. at 14. To the extent that

after considering arguments made in pretrial motions and responses, at trial, in posthearing briefs, and in posthearing motions and responses, I make the following rulings, findings, conclusions of law, and recommended remedy and order.

FINDINGS OF FACT

I. Evidentiary Rulings

In response to multiple evidentiary motions and requests for reconsideration of rulings, I make the following evidentiary rulings and/or affirmations of rulings. Any prior rulings not addressed below are reaffirmed.

On the last day of the hearing at the close of its case-in-chief, the Respondent offered Respondent Exhibit 45, consisting of pages excerpted from a 2015 Security and Exchange Commission (SEC) filing obtained from the internet, requesting that I take "judicial" notice of it pursuant to Federal Rules of Evidence (FRE) 201(b).[3] The General Counsel and the Union objected. I withheld ruling, providing the parties opportunity to further explain their positions in their briefs. I find the Respondent's arguments unconvincing. I sustain the objections and exclude Respondent Exhibit 45. The exhibit was offered after the completion of almost 6 days of testimony, and no witness was called to testify about the underlying facts or their context or relevance. An owner of Take Care testified in the General Counsel's case-in-chief, and the Respondent questioned her about the relationship between Take Care and Walgreens, an issue which Respondent Exhibit 45 is purported to address, but counsel for the Respondent failed to question her about Respondent Exhibit 45. Moreover, there was nothing preventing the Respondent from calling an executive or other representative of either Take Care or Walgreens to present evidence substantiating the relationship between the entities, had the Respondent deemed that evidence necessary and had it prepared in advance to do so in proper order. I note too that the excerpts of SEC filings referred to in the Respondent's brief are not the same excerpts offered as Respondent Exhibit 45; thus, Respondent Exhibit 45 appears to be an incomplete document, and in the absence of a knowledgeable witness, it lacks substantive reliability. The cases cited by Respondent in its brief are inapposite, as they reflect circumstances where judicial or administrative notice was taken of facts whose accuracy could not reasonably be questioned and which were either facts of general knowledge (e.g., relying on the National Institutes of Health's website for definitions of medical terms) or were facts asserted by a party on its website or in formal filings. Here, the facts sought to be adduced by Respondent Exhibit 45 are not generally known facts, and neither Take Care nor Walgreens was a named party to this action.

Also on the last day of hearing, the Respondent submitted a written motion to reconsider my prior ruling to exclude Respondent Exhibit 39 and moved to offer Respondent Exhibit 53. Both documents purport to contain summary data collected by the Respondent from employees

---

I have made them, my credibility findings are set forth above in the findings of fact for this decision.

[3] FRE 201(b) describes the kinds of facts that may be judicially noticed: The court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

during their May 17, 2016 orientation. I rejected this evidence as unreliable hearsay and because it lacked any discernible probative value. The Respondent argues that this evidence is admissible as survey evidence. I disagree. The evidence is not a summation of survey data as contemplated by the cases that counsel for the Respondent cited. The Respondent asked employees a series of leading, compound questions during their orientation at their new job. (R. Exh. 37.) Their participation was clearly not voluntary or anonymous, and there is no reason to believe employees answered these questions—questions that seek opinions comparing their new employer and anticipated employment experience to their prior employment experience—in a meaningful way that could reliably reflect employees' actual states of mind. I find that the answers to these self-serving questions, which are not part of an objective, scientifically designed treatment or measure, have no probative value whatsoever. In fact there is nothing about this survey that would conform to basic standards for measure design or methodology to purport to result in objectively valid or reliable data. Respondent Exhibits 37 and 53 simply do not contain survey evidence suitable for admission pursuant to FRE 803(1) or (3) hearsay exceptions as the Respondent contends.

At the close of the hearing, I granted the Respondent 2 weeks to submit a copy of the tally of ballots in Case 13–RC–22014. The Respondent had unsuccessfully attempted to obtain the document from the NLRB's Regional Office and Division of Operations Management during the hearing. I grant the Respondent's unopposed, posthearing motion to admit Respondent Exhibit 36, a copy of the tally of ballots from the May 31, 2011 Board-conducted election in the Take Care bargaining unit, which the Respondent obtained from the Union. At the hearing, the Respondent offered Respondent Exhibit 13, a printout from the NLRB website containing information related to the tally of ballots, which I received, although I cautioned that on its face Respondent Exhibit 13 appeared to have inaccurate information, and therefore, I found it unreliable under the circumstances.

In its posthearing brief, the Respondent repeatedly referred to facts not in evidence. This included, inter alia, referencing web pages not in evidence in support of factual assertions, referring to the substance of hearsay evidence expressly not admitted for its truth, referring to facts expressly excluded at the hearing—including facts I excluded as a sanction for the Respondent's failure to adequately respond to the General Counsel's Subpoena Duces Tecum, and documents it attached to its posthearing brief. In making my findings of fact, I have relied only on the evidence contained in the transcript, including the testimonial and documentary evidence, and any evidence admitted here. While I have considered the arguments of the parties to the extent they are consistent with the facts in evidence, I have not considered as evidence any statements made in the briefs of counsels for General Counsel, Respondent, or Union, except to the extent a statement might function as an admission against interest.[4] Similarly, I have not considered facts asserted in the parties' opening statements or in any arguments made at the hearing if those facts were not established on the record, except to the extent that they may constitute admissions against interest.

[4] Specifically, I neither receive nor have I considered the three documents Respondent attached to its brief. There is no showing that the documents or other website references were unavailable to the Respondent before the record closed and the inclusion of this evidence to supplement the record in a posthearing brief is out of order and inappropriate. Thus, whether or not I could have taken administrative notice of said evidence as urged by the Respondent had it been offered in a timely manner at the hearing is moot.

In its posthearing brief, the Respondent asked that I reconsider certain evidentiary rulings, including: (A) my grant in substantial part of the General Counsel's motion in limine and the Union's petition to revoke the Respondent's Subpoena Duces Tecum, and (B) my ruling to exclude the Respondent's use of applicant's resumes in its case-in-chief and to strike related testimony already elicited by Respondent as a limited, tailored sanction for the Respondent's failure to produce the resumes in response to the General Counsel's Subpoena Duces Tecum. I deny both requests. The Respondent has raised no issues not already fully considered and I find no cause to reconsider these rulings.[5]

The Respondent's May 18, 2017 motion to reopen and supplement the record, which was opposed by the Union and the General Counsel, is denied. In this motion, the Respondent seeks to submit (A) printouts of certain Facebook discussions, (B) a version of the Union's Bylaws, and (C) a monthly tally of union members who pay dues.

(A) Regarding the printout of excerpts represented to be from a Facebook discussion group, the Respondent has failed to establish admissibility, relevance, or materiality. This evidence is hearsay and not subject to any exceptions to the hearsay rule.[6] What the Respondent may have learned from a Facebook discussion *after* it made a decision to refuse to recognize the Union is not material to the issues in this case. By granting the General Counsel's motion in limine at the outset of the hearing in this matter, I ruled that this type of evidence of employee support for the Union, not known to the employer when it refused to recognize the Union, would not be admitted. I also granted the Union's motion to quash a subpoena seeking similar evidence. The fact that the Respondent was able to acquire this information in another judicial proceeding does not suddenly make it admissible in this proceeding. I further note that in its motion, the Respondent mistakenly characterizes my earlier ruling: this evidence was excluded both because it was irrelevant *and* because its production would run afoul of the Board's practice not to permit the hearing process to be used as a means of an employer discovering and disclosing Section 7 activity unless such evidence is necessary and material to the issues in the case.[7] The Respondent has raised no new argument or presented any substantive reason for me to reconsider that ruling at this late date.

(B) Regarding the Union's bylaws, I find them immaterial to any substantive questions in this case. As discussed below, whether the Union sometimes referred to the Take Care

[5] See Tr. 14–24 and Tr. 992–936. Testimony stricken from the record: Tr. 378:21–24, 382:16–384:22, 900:01-902:1, 903:08-905:11; R. Exh. 10 stricken from record.

[6] It also inadmissible because it is incomplete, in places illegible, and contains redactions that are not explained, and therefore inherently unreliable.

[7] The Board's practice protects employees from the Respondent's use of the legal process to uncover and disclose union activity, affiliation, or support. The Board limits such inquiry to situations when it is truly required. See *National Telephone Directory Corp.*, 319 NLRB 420, 421–422 (1995), and *Sheraton Anchorage*, 19–CA–32148 et al., unpub. Board order issued January 21, 2011; see also *Veritas Health Services, Inc. v. NLRB*, 671 F.3d 1267, 1274 (D.C. Cir. 2012). Here, where extant Board law forecloses the Respondent's asserted defense that would necessarily require the discloser of evidence of protected union activity not already known to the Respondent, I have excluded the evidence as irrelevant and immaterial.

bargaining unit employees as Walgreens employees is simply irrelevant to the issues before me. There is no question that the employees—both under Take Care and the Respondent—worked inside Walgreens stores. Witnesses commonly referred to "Walgreens" in referencing the Clinics. Moreover, the Respondent has not established that this evidence is "newly discovered" within the meaning of the regulations, as it has not established these bylaws were unavailable prior to the hearing.

(C) Regarding the monthly tally of union members who paid dues, for the same reasons discussed above regarding the Facebook discussion printouts, this evidence is neither relevant nor material and is evidence that was precluded by my grant of the General Counsel's motion in limine at the outset of the hearing. The Respondent has raised no new argument or presented any substantive reason for me to reconsider that ruling at this late date. Therefore, this evidence is excluded. The Respondent cannot rely on evidence acquired 10 months after it chose not to recognize the Union to show that it relied on objective evidence of lack of majority support at the time of the decision. *Levitz Furniture*, above, 333 NLRB at 717; accord *Scomas of Sausalito, LLC*, 362 NLRB No. 174 slip op. at 7 (2015), and; *Anderson Lumber Co.*, 360 NLRB 538, 542, 544 (2014), enfd. 801 F.3d 321 (D.C. Cir. 2015).

The Respondent is not prejudiced by my denying this motion to reopen the record, as the evidence is not relevant to the issues in this case, nor is any extraordinary circumstance presented to cause me to reopen the record. The Respondent was afforded the opportunity to present relevant evidence through proper procedures during the course of the hearing. As I have denied this motion, the documents attached to the motion, which were not marked as exhibits or received by me in this proceeding and which I do not recognize or consider as record evidence, are hereby stricken from the motion.[8] Likewise, the Respondent's submission of additional documents attached to its "reply" to the Union's and General Counsel's oppositions to its motion to reopen are not received as record evidence and are hereby stricken from its reply.

For similar reasons, the Respondent's July 19, 2017 motion for notice or to reopen and supplement the record is also denied. The attachments to the motion are not considered and are stricken. In this motion the Respondent requests that I take notice and make factual findings based on certain arguments made by Counsel for the General Counsel, who was acting as Counsel for the Board, in a Section 10(j) proceeding before the United States District Court. In that proceeding, the Board seeks injunctive relief related to certain issues before me in the present case. As I have noted above, however, the District Court appears to have permitted Respondent to elicit and admit evidence that I had expressly excluded from the record in this case. That such evidence was found to be relevant to issues before the District Court does not change its relevance to the issues before me. The evidence that Respondent seeks to introduce by this motion is not relevant to the issues in the present case for the reasons I have already explained, and I shall not receive it. The issues and legal standards considered by the District Court are not identical to the issues before me. Therefore, any arguments or theories presented to the District Court by Counsel for the General Counsel involve a record distinct from this one in a proceeding distinct from this one and are inapposite.[9]

[8] Although some pages are marked subject to a protective order, I did not grant such order.

[9] See *George Joseph Orchard Siding, Inc.*, 325 NLRB 252, 255 (1998) ("the General Counsel's memoranda, or indeed other communications or positions of the General Counsel, like the positions of the

II. Jurisdiction

The Respondent admits, and I find, that it is a not-for profit corporation with its headquarters and places of business in the state of Illinois, where it engages in the business of operating hospitals and medical care facilities. The Respondent further admits, and I find, that in conducting its operations, in the 12-month period ending December 31, 2015, it derived gross revenues in excess of $250,000. The Respondent admits, and I find, that at all material times it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and has been a health care institution within the meaning of Section 2(14) of the Act. The Respondent admits, and I find, the Union has been a labor organization within the meaning of Section 2(5) of the Act. Based on the foregoing, I find that this dispute affects commerce and that the Board has jurisdiction of this case, pursuant to Section 10(a) of the Act.

III. Alleged Unfair Labor Practices

A. The Parties, Other Entities, and their Relationships

The identities of the employers in this case have been raised as issues and therefore are presented in detail below.

Take Care Health of Illinois P.C. (Take Care) is an entity established to provide acute health care services in clinics in Walgreens Stores in Illinois (Walgreens Clinics). Take Care has a corporate or business affiliation with some aspect of Walgreens stores. Although this relationship is not fully established on the record, Take Care is referred to as a wholly-owned subsidiary of Walgreens, operating "as partners but not employers" with a business separation between the Clinics and the pharmacy/stores (Tr. 225); see also (U. Br. at 3). Take Care is held by a management company, Take Care Health Systems, and there exist related entities with similar titles that operate in different states, e.g., Take Care Health Florida and Take Care Health Texas. All of Take Care's shares are currently owned by Susan Ferbert, who had been a regional vice president of Take Care before she was made the chief nurse practitioner in 2016. Ferbert currently works for Walgreens. Walgreens provided corporate human resources support and in-house legal and labor relations support to Take Care. Thus, although not fully established, the record makes clear that there has been some degree of business integration between Take Care and at least some section of Walgreens stores.

Although its name is raised frequently in this record, Walgreens is not a party to this case. Both Take Care and the Respondent have ongoing business relationships with Walgreens which are not fully established on this record, and the employees at issue in this case worked inside Walgreens stores both before and after the Respondent took over operating the Walgreens Clinics.

---

counsel for the General Counsel made at trial, are but the position of a party to the complaint litigation. As such the General Counsel's positions-as opposed to joint General Counsel-Board determinations or provisions-are not binding on the Board or its judges and are effective only to the extent they are persuasive"); *George Banta Company*, 256 NLRB 1197, 1221 (1981) (Counsel for General Counsel's assertion of a legal principle is not binding upon the Board).

Under Take Care, the bargaining unit employees did not directly work for Walgreens, and the record does not support a finding that they were jointly employed by Walgreens or that Walgreens, rather than Take Care, controlled their terms and conditions of employment. The Respondent urges me to find that Walgreens and Take Care are a single employer; I decline to do so. Although there is some evidence suggesting they are related entities, I find the evidence to be incomplete and insufficient to conclude they are a single, integrated entity. Moreover, I find it unnecessary to establish the full nature of this relationship. It is clear that Walgreens operates retail stores and pharmacies, and that it does not own or operate hospitals, labs, medical practices, or healthcare clinics in Illinois other than the Walgreens Clinics run by Take Care, and later leased and operated by the Respondent. The Respondent, as described below, also has ongoing business relationships with Walgreens, which include the lease agreement that puts in the sole control of the Respondent the operation of all 56 healthcare Clinics in Walgreens stores in the Chicago area and rights to additional locations and caused the Respondent to acquire materials, furniture, and supplies from Walgreens for use in the Clinics, as well as other contractual arrangements whereby Walgreens operates pharmacies in the Respondent's facilities in support of the Respondent's mission. (See R. Exhs. 33 (Sublease) and 34 (Bill of Sale); Tr. 526-527).

The Charging Party, INA, is a labor organization that represents bargaining units of healthcare employees, including APNs and other nurses, in private and public institutions in Illinois. Following a Board-conducted election on May 31, 2011, on June 14, 2011, INA was certified by the NLRB as the exclusive collective-bargaining representative of a unit of advance practice nurses (APNs) who worked in the Take Care Health Clinics at Walgreens stores, which were spread out geographically among multiple counties in Illinois, in and around Chicago. (GC Exh. 3.) This unit is described in the parties' collective bargaining agreement as the following:[10]

> All full-time and regular part-time nurse practitioners (NPs) including PRN nurse practitioners (PRNs) in the following Illinois counties: Cook, DeKalb, DuPage, Kane, Kendall, Lake, McHenry, Peoria, Tazewell, and Will, but excluding all other persons including, but not limited to, physicians, all other professionals, technical employees, maintenance, business office, clerical and other staff employees, and supervisors, managers and guards as defined in the National Labor Relations Act, as Amended.

Advocate Health and Hospitals Corporation (AHHC) is a large, nonprofit network of entities that provide healthcare and healthcare-related services throughout the greater Chicago area. It owns and operates facilities, such as hospitals, clinics, and labs, as well as medical practice groups of physicians and other practitioners. Advocate Medical Group (AMG), the name under which the Respondent is operating in this case, is an entity, also described loosely as a division, functioning within the AHHC network, although it apparently has no separate, formal

[10] Although this unit was described slightly differently in the Certification of Representation, the parties may mutually agree to change the scope of the appropriate unit. Also, throughout this record the employees are referred to as advanced practice nurses, or APNs, and occasionally as nurse practitioners. (Compare GC Exh. 3 and GC Exh. 2(c).) The record fully establishes that the licensing process in Illinois combines nurse practitioners with midwives, anesthetic nurse practitioners, and family practice nurse practitioners, referring to them all as "APNs." To avoid confusion, I use the acronym APN rather than NP in this decision to refer to the nurse practitioners at issue in this case.

corporate identity. The AMG portion of the Respondent is a medical practice group led by physicians; it employs approximately 1500 physicians and has 3500 affiliated physicians. It also employs other health care professionals, such as the APNs working at the Advocate Clinics at Walgreens, and other staff. Advocate Dryer Clinics Inc. (Dryer) is a related for-profit entity, although apparently not owned by AHHC, but by Advocate Healthcare Network, which also owns AHHC, and therefore, AMG. Dryer and AMG function within this integrated network driven by a centralized, unified corporate mission, articulated in shorthand by multiple witnesses as a goal to treat patients with "right care, right time, right place." Before they began operating walk-in clinics in Walgreens stores, the Respondent operated treatment clinics, known as Immediate Care Clinics (ICCs) that provided some of the same care as the walk-in clinics in Walgreens stores, as well as more complex, specialized, and emergent care.

The Respondent, as AMG, employs the APNs who work in the 56 Clinics in the Walgreens stores, although some day-to-day direction of a small number of employees is overseen by the managerial structure of Dryer. The Respondent has a "matrix" style reporting structure, which means that leaders within AHHC report to multiple leaders and have multifaceted responsibilities. For example, Lee Sacks, MD, is the Executive Vice President and Chief Medical Officer of AHHC, as well as CEO of Advocate Physician Partners/AMG. Donna Cooper is the Chief Operating Officer of AMG, as well as the President of Dryer. Pamela Smith is the Vice President of Nursing and the Chief Nurse Executive for both AMG and Dryer. With respect to the practice operations of the Respondent in which the Advocate Clinics at Walgreens function, there are practice directors and practice managers, organized in a reporting structure that is geographically based: Advocate North, Advocate South, Dryer that functions as Advocate West, and Chicago proper. Each has two or three practice directors who report to the regional vice president. Several practice managers' report to the practice directors; the practice managers' scope of responsibility is also geographically based. Therefore, the practice managers responsible for overseeing particular Advocate Clinics at Walgreens sites also have responsibilities for other practice sites in their geographic areas, such as family practice sites, ICCs, etc. The APNs who work at the Advocate Clinics at Walgreens report to particular practice managers. Supervising APNs at the Advocate Clinics at Walgreens is just one of multiple responsibilities of the practice managers, who are not necessarily APNs themselves. This reporting structure was in place before the Respondent commenced operating the Walgreen Clinics.

B. The Historic Bargaining Unit at Take Care

On June 14, 2011, the Union was certified as the exclusive collective-bargaining representative of employees in the unit described above of APNs, including APNs performing work as Clinic Coordinators and APNs working on a per diem or "PRN" basis, which they referred to as "cover" nurses, following a Board-conducted election. The tally of ballots showed that of approximately 166 eligible voters, 88 voted for the Union and 52 voted against the Union.[11] Take Care and the Union negotiated a comprehensive collective bargaining agreement effective for 3 years through May 7, 2015. (GC Exh. 2(c).) Take Care and the Union continued to operate under the terms of the expired agreement while negotiating a new contract. On March 23, 2016, with knowledge that Take Care would be ceasing operations and that the Respondent would

[11] There were also 4 void ballots and 9 challenged ballots, which were too few to affect the outcome, i.e., nondeterminative.

be taking possession of and continuing the operation of the Walgreen Clinics as the Advocate Clinics at Walgreens, Take Care and the Union entered an agreement that covered terms and conditions of employment in effect from March 26, 2016, through May 14, 2016. (GC Exh. 2(d).) Take Care closed its operations on May 14. The Respondent immediately took possession of the Clinics pursuant to its lease agreement and equipment/supply purchase agreement with Walgreens. (R. Exhs. 33 and 34).

In Illinois, APNs must have a particular license that requires a master's degree level education in addition to a registered nurses (RN) license, and national board licensing exams for nurse practitioners or nurse midwives. The APNs working for Take Care provided a limited scope of health care to patients in the Walgreens Clinics, including treating acute illnesses (such as colds, sore throats, etc.), wellness exams, regular physical exams, as well as limited exams for clearance for school athletics, for example. Related to their licenses, the APNs sign collaborative agreements with physicians who provide guidance and clinical oversight in their practice. (See, e.g., R. Exh. 25.) This guidance and oversight can involve as little as one conversation a month.

At Take Care, the APNs worked independently. They often worked with only a medical assistant, and sometimes alone, or with just one other APN, depending on the staffing of the particular Clinic site. They had the opportunity to cover shifts at other locations, which some regularly did. The physical set up at all the Take Care locations was identical in design, with the same equipment and supplies (e.g., exam table, ear scopes, eye scopes, weight scales, general supplies such as bandages, and refrigerators for medications and vaccines), which were available in the same locations within each Clinic and with examination rooms that had similar furniture. This design was used to make treatment efficient, to avoid errors, and to facilitate APNs coverage shifts in various Clinics effectively without confusion.

At Take Care, a nurse practitioner functioned as a "market manager" who oversaw APNs in several Take Care Clinics; the market manager was the first line supervisor of APNs for administrative purposes. An APN might speak to his/her market manager once per week. There was no regular onsite supervision of APNs.

In late March 2016, the Union and Take Care signed a memorandum of understanding stating that the Respondent had signed an agreement to lease all the Clinics and that, as of May 14, 2016, Take Care would no longer employ the Unit APNs.

On May 14, Take Care employed 165 APNs in the Walgreen Clinics who were represented by the Union for collective-bargaining (Jt. Exh. 4).

C. Advocate Begins Operating Clinics in the 56 Walgreens Stores in May 2016

On January 10, 2016, the Respondent announced to APNs employed by Take Care that it would be opening the Advocate Clinics at Walgreens in a combined meeting with management of Take Care. The Respondent made clear that employees would need to apply for the positions, but also that it was interested in considering the Take Care APNs and intended to attempt to fill all the positions with Take Care employees. (R. Exh. 35; Tr. 378, 483, 893.) The Respondent opened the application process, accepted applications, interviewed employees, and selected and hired APNs

for the positions in the 56 Clinics. Former Take Care employees understood that they had to reapply for their jobs, and those jobs were not guaranteed. During interviews, applicants from Take Care were told that they would be doing the same job they had been doing before. At some point well before May 15 when it took possession of the Clinics, the Respondent had hired 143 of Take Care's APNs to staff the Clinics.[12]

On May 16 and 17, 2016, the Respondent held an orientation for all APNs who were hired to work in the Advocate Clinics at Walgreens. (See R. Exh. 19.) The Clinics were closed for those days, during which time they were cleaned and set up to open and operate as Advocate Clinics at Walgreens, with new signage. They opened on May 18, 2016.

By May 16, the Respondent had hired 143 APNs who had been members of the Take Care bargaining Unit to work in the Advocate Clinics at Walgreen (Jt. Exh. 4). The Respondent employed a total of 165 APNs on May 16. (Jt. Exh 4.)

D. Changes and Proposed/Planned Changes in Operations and Practices Since May 2016

Some changes were planned by the Respondent. The Respondent told employees that it would eventually be opening the Clinics to pediatric patients as young as 6 months old; at Take Care, the APNs treated patients as young as 18 months old. The Respondent paid employees by a salary structure, rather than an hourly wage, although the Respondent tried to at least match the APNs' prior wage within this new structure. The Respondent believes it has an improved culture of service and safety that was different from Take Care. The Respondent also intended to require APNs to have the licensing required to prescribe narcotics, and it determined that several drugs available for use under Take Care would no longer be prescribed by the APNs.

The Respondent hired daily cleaners to take over the basic cleaning tasks, some of which the APNs under Take Care were required to perform, such as daily sweeping and emptying trash at the end of a shift. The APNs continue to be responsible for disinfecting the exam rooms and equipment between patients.

The Respondent cleaned the Clinics and changed signs during the 2-day transition period. It set up new computer systems for administration, scheduling, and medical records tracking. It also acquired and installed freezers for the Clinics and ensured that the necessary medical supplies were appropriately stocked. It changed the lock combinations.

E. Union's Demand for Recognition and Request to Bargain

On May 17, 2016, just after the Respondent took possession of the Walgreens Clinics, the Union sent a letter to the Respondent demanding recognition as the exclusive bargaining representative of the APNs, and requested bargaining. (GC Exh. 2(a).)

The Respondent responded by letter on May 19, 2016 by Bonnie Kreischer, vice president of human resources, stating that it was not obliged to recognize and bargain with the Union,

[12] It was administratively necessary to hire and bring onboard the APNs before the opening of the Clinics due to the need licensing requirements.

because it believed that it was not a successor employer and that the Take Care bargaining unit was not an appropriate unit, and asserting that it had a good faith doubt as to the Union's majority support. The Respondent invited the Union to contact Ms. Kreischer if it disagreed. (GC Exh. 2(b).)

The Union did not reply to the Respondent's May 19 letter, except by filing the initial unfair labor practice charge on June 29, 2016.

F. Supervisors' Allegedly Unlawful Statements in May 2016

The General Counsel alleges that on at least three occasions, practice managers coercively questioned employees about the Union or questioned employees in a manner that interfered with their Union support, in violation of Section 8(a)(1).

On May 20, 2016, the Respondent held a 2-hour meeting with supervisors and managers to address the Union's May 17 demand for recognition. (See R. Exh. 32.) It was held at an AMG site, and the supervisory team of both AMG and Dryer attended. At this meeting, the Respondent discussed its perspective on what a supervisor can and cannot lawfully say to employees regarding the Union. Following this meeting, supervisors were instructed to speak to each one of their subordinate employees individually in order to "support" them about the Union demand for recognition. This was to be accomplished by each supervisor asking each employee about a May 18 letter emailed to employees by Donna Cooper and Pamela Smith that addressed the Union's demand and the Respondent's disagreement with it, and that requests of employees, "Unless you know what you are signing and how your signature will be used, **we respectfully ask that you not sign anything in support of the INA's organizing activities.**" (GC Exh. 5, p. 2 (emphasis in the original).)

As instructed at the May 20 meeting and by a follow up email from Donna Cooper, Practice Managers Rachel Kranz and Eric Pertzborn testified that they spoke to each APN working under their direction.[13] Kranz stated that they had been *told to discuss the May 18 letter with APNs* and *tell them they would do anything to support them* (Tr. 785) and that she approached all her APNs after "*we were asked to follow up* with the nurse practitioners and *guide them with our tips* to make sure they were supported . . . if they had any questions . . . if there was any questions." (Tr. 778, 785.) Pertzborn explained that he received an email *containing instructions on what to talk to APNs about*, which he followed (Tr. 1023); he testified that was the same information as was given to him in a power point presentation at the May 20 meeting. He asked the APNs he supervised if they had received the email. He testified: *then, I asked, you know, I'm really happy you're here*. I went on to say, do you have any questions? I said, from my experience, they've always given me what I need . . . support to be successful." He then gave Darley and other APNs his cellphone [number]. He testified that he did not discuss INA with the five APNs he supervised; he testified that he knew from having worked in a unionized setting before not to do so. Pertzborn explained that the talking points he received by email and in the May 20 training contained entries about INA, which were along the lines of you can't obstruct

[13] The Respondent failed to produce this follow up email from Cooper. I do not rely on any reported substance of this email, which is unreliable hearsay pursuant to the "best evidence" rule. I specifically make no conclusions regarding whether what the managers were instructed to do was lawful.

talking to employees, can't stop them from signing something. (Tr. 1024.) Although he asked his supervisees if they had seen an email from human resources, he actually had not seen the email they had received about which he was asked to engage with them.

1. Statements by Kranz to Chambers.

Kathy Chambers is an APN in the Montgomery, Illinois Walgreens store; she is employed by AMG, although she understands that her practice manager, Rachel Kranz, works for Dryer. Chambers testified that on May 18, just after the Clinics in the Walgreens stores reopened under AMG, she received an email (GC Exh. 5) from Donna Cooper of AMG, stating that the Union had demanded recognition of the bargaining unit of APNs who work in the Clinics. Within a few days of receiving (GC Exh. 5), Chambers received a phone call from Kranz on the Clinic phone, which she recalls as unusual because she normally receives calls from Kranz by cellphone. Kranz asked Chambers, "what do you know about what's going on with the Union?" Chambers responded that she didn't know about it. Chambers asked, "Is this something I need to be worried about?" Chambers responded that there was nothing she needed to be worried about. Kranz responded that she "was just checking to make sure." The conversation ended; they did not discuss anything else on that call.

Chambers and Kranz have become friendly and they discuss personal as well as work-related topics when they speak together. They appear to enjoy a positive working relationship. Chambers testified that a week before the hearing in November 2016 she received a call from Kranz in which Chambers told Kranz she had been subpoenaed to testify, which she said was not personal. Kranz called and said she "had a question for" Chambers. Kranz said that she "had to go to Downers Grove[14] about the whole Union thing," and that she was "going to be busy all day long dealing with the court case from the Union." Chambers then told Kranz that she had been subpoenaed. Kranz told her that "it is OK" and that she did not "hold anything against" Chambers. Chambers did not tell Kranz it was nothing against Advocate. She told Kranz that she had been asked about an interrogation Kranz had made. Kranz stated that she "[did] not know why they're saying I interrogated you." Chambers responded, that is just what they call it.

In contrast to Chambers' account, Kranz testified that she spoke to Chambers in person in one of the exam rooms at the Montgomery Clinic, likely in the second week of operations. Kranz had been instructed to discuss the letter about the Union with the APNs she supervised (Tr. 785). As instructed, Kranz asked Chambers if she had received the letter from Advocate, and if there were questions. Kranz asked, "if there was anything I could do to support [her]?" Kranz testified that Chambers *denied any concerns and denied having any involvement in the Union*. (Tr. 781, 785.) "It wasn't dwelled on." (Tr. 781.) From there, they discussed clinic-related things. Kranz testified that she speaks daily by phone with the APNs working in the Walgreen Clinics she oversees and she visits them 2 to 3 times per week. Kranz testified that she did not ask Chambers, either "what do you know about the Union?" or did she "need to be worried about the Union?"

Regarding the more recent comments, Kranz denied that she told Chambers she would be testifying. Kranz testified that she received a call from Chambers who told Kranz that she felt guilty, but Kranz did not ask about the Union (Tr. 790–791). Kranz testified that "[I] admit about

[14] Downers Grove is an AMG site that functions as a headquarters.

the letter, I asked about receiving the letter and if she had any concerns." She thanked Chambers for being honest and told her she doesn't hold it against her. Kranz testified, "She [Chambers] did say to me, she goes, 'I said that I was questioned and now it's getting termed as interrogating. I want you to know that that's personal. That's not what I said.'" They also spoke about other things in that call.

Where they conflict, I credit Chambers' version of these conversations. Chambers testified in a clear, deliberate manner, demonstrating attention to the questions asked, in an apparent attempt to be precise and accurate. Kranz at times appeared to be struggling to find the correct answer, rather than answering in a straight-forward, matter-of-fact manner, occasionally answering questions that were not directly asked. Chambers recalled the May 2016 conversation consistently and in substantial detail, lending credibility to her memory. The fact that Kranz insists that she spoke with Chambers in person, but Chambers recalls that they spoke by phone is an important distinction. I credit Chambers on this issue based on her description of the call, including her representation that it was unusual. As described by employee Hackl below, I find it believable that Kranz called APNs upon learning of the Union demand, perhaps even before she was instructed to approach each employee in person. Moreover, Chambers is a current employee of the Respondent, testifying against the Respondent's interest, which lends support to a finding of credibility under the circumstances. See, e.g., *Flexsteel Industries*, 316 NLRB 745 (1995).

2. Statements by Kranz to Hackl.

Megan Hackl works at the Montgomery, Illinois Advocate Clinic at Walgreens. She had worked in the same Clinic for Take Care. In May 2016, Kranz was her practice manager. She received a phone call from Kranz on her personal cellphone when she was not working. Kranz does not usually call her on her day off. Kranz said that they at Advocate had heard that the union representatives were coming to the Clinics to talk to the union members, meaning providers in the Clinics. Hackl testified that Kranz "requested that we not talk to them and that we not sign anything for the Union." Hackl told Kranz that no one had come to talk to her at the Clinic. Hackl did not feel like committing to not sign anything for the Union or to not talk to anyone for the Union because she believed it was her right to talk to them or sign things if she wanted. They did not discuss anything work related. The last thing Kranz said was that she wanted the APNs not to sign anything for the Union.

I credit Hackl's testimony, which was not specifically refuted. She testified in a clear, consistent and forthright manner, and nothing in her presentation suggested I should doubt her sworn testimony.

3. Statements by Pertzborn to Darley.

Julia Darley is an APN working for AMG in the Walgreens store at Lockport, Illinois. In May 2016, Pertzborn was her practice manager. Due to a preplanned family commitment, Darley was off work the first 2 weeks of the Respondent's operations. She returned to the Lockport site to work on either May 26 or 27, 2016. On her first day working without a lot of help, at the beginning of her shift while she was "stumbling" through getting into the computer system, which was causing her to be flustered, Pertzborn came to the exam room to speak to her. He sat on the

exam table near her, which struck Darley as strange because there was another chair in the room. He leaned over toward her in what she described as a "sneaky" way. According to Darley, Pertzborn asked her, "did you see the email about the Union." She had in fact seen an email from Cooper who is COO of AMG that dealt with the Union, but she was just learning how to access the Respondent's email through her phone and did not have a chance in the time she was off work to consider it in detail. Darley told Pertzborn that she did not have enough information to discuss it with him. She understood that an employer is not supposed to ask her about Union information. Pertzborn asked again about the Union and the email. Darley told him she was not comfortable talking about it. Pertzborn responded, "*well, just don't sign anything.*" (Tr. 141.) Darley later read the email from Cooper that stated in bold, "unless you know what you are signing and how your signature might be used we respectfully ask that you not sign anything in supporting INA's organizing efforts." (Tr. 143.)

Pertzborn testified that, in May 2016, he *did not know of any union activity* at the Joliet and Lockport Advocate Clinic at Walgreens sites. He attended the May 20 training described above. He testified that he may have briefly met Darley at a "meet and greet" reception before the Respondent opened the Walgreens Clinics, but also met her on May 18, the day the Clinics opened. He met with her in person in the exam room on the right at the Lockport Clinic within a few days of the May 20 training. Darley was sitting at the computer workstation in the exam room. He chose to sit on the exam table, because he believed sitting in the "guest" chair would have been awkward. Pertzborn asked the APNs he supervised, including Darley, whether they had received the email. He denies having told Darley not to sign a union card. (Tr. 1025–1026.)

Where they are inconsistent, I credit Darley's version of the conversation over Pertzborn's. Although both witnesses presented as sincere and earnest, I find Darley's testimony more credible because it was more specific. Darley recalled details of the subjective experience of the conversation as well as what was said. Pertzborn, on the other hand, tended to speak in general terms, describing how he spoke to all of his APNs and what he said to all of them, rather than specifically related what was said in the conversation with Darley. Pertzborn appeared to not recall that Darley was on leave during the first 2 weeks of Advocate Clinics at Walgreen's operations. Although I do not doubt Pertzborn's explanation that he sat on the exam table rather than the guest chair for convenience without nefarious intent, that Darley recalled the conversation with specificity in part because she thought it was strange that he sat on the exam table contributes to my conclusion that her memory is credible. Moreover, as with Chambers, Darley was a current employee testifying in opposition to her employer's interest, which lends additional support to my finding her testimony to be credible. See *Flexsteel Industries*, above.

DISCUSSION AND ANALYSIS

A. Is the Respondent a Successor Employer to Take Care?

1. Applicable law

As developed by the Board and the Supreme Court, the rules of labor-law successorship are well established. *UGL-UNICCO Service Co.*, 357 NLRB 801 (2011) (discussing the history

and development of the Board's successorship doctrine); see particularly, *Fall River Dyeing & Finishing Corp. v. NLRB*, 482 U.S. 27, 42–44, 46–47 (1987) and *NLRB v. Burns Security Services*, 406 U.S. 272, 280–281 (1972). A new employer is a successor to a prior employer when, considering the totality of the circumstances, there is a "substantial continuity" of business operations between the two employers and when a majority of employees in the appropriate unit of the new operation had been employed by the predecessor. *UGL-UNICCO*, above. Among the factors the Board considers to determine whether there is a substantial continuity of operations between the new and prior employers are: whether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions and under the same supervision; and whether the new entity has the same production process, produces the same products or provides the same services, and basically has the same body of customers. *Fall River Dyeing*, above at 43; *Empire Janitorial Sale & Services, LLC*, 364 NLRB No. 138 (2016), slip op. at 11. In conducting the analysis, the Board considers whether, from the perspective of those employees who have been retained, employees will view their job situations as essentially unchanged. *Fall River Dyeing,* above; *Empire Janitorial Sales,* above.

Assuming that a "substantial continuity" of the business operations is established, a successor employer becomes obligated to recognize and bargain when a majority of employees in the successor employer's bargaining unit were employed by the predecessor (and therefore were represented by the union). *Fall River Dyeing,* above at 46*; Empire Janitorial Sales,* above. If the successor immediately begins providing a full range of operations and a majority of the employees in the successor's bargaining unit were represented by the unit in the predecessor bargaining unit, the successor's obligation to recognize and bargain with the union begins immediately. During the transition between employers, a union is in a particularly vulnerable situation, and the Board and Courts recognize a presumption of majority support. *UGL-UNNICO*, above at 3–4, citing *Fall River Dyeing*, above at 39. The Board has determined that this presumption is conclusive for at least 6 months from the date bargaining begins. *UGL-UNNICO*, above at 13–14.

Key questions raised in this case with respect to a successorship analysis include whether there was a "substantial continuity" of operations from Take Care to the Respondent and whether the Board should find that the unit remains an appropriate unit. I address them separately below.

2. Is there "substantial continuity" of business operations?

Based on the totality of the evidence, I find there was a substantial continuity of operations between Take Care and the Advocate Clinics at Walgreens. The business of the two operations is essentially the same. They both provide primary health care services to clients in same Clinics in the Walgreens stores. They serve the same general patient population. Indeed, it appears that the Respondent chose to take over the Clinics at Walgreens as part of a plan to fill a perceived gap in its service model that would expand and better serve patients, within the larger population it services in the neighborhoods in which Take Care operated. The fact that the Clinics were able to provide a level of care in a distinct setting provided the Respondent with a means to reach new patients and better serve existing patients. In fact, seventy percent of the Clinics patients were new to the Advocate network. Although under the Respondent, the Clinics joined an extensive

network of medical providers and services, the Clinics continue to operate similar to how they had done under Take Care. They provide the same level of care, in the same manner, during the same general hours, with the same clinical model, using the same equipment and supplies. In fact, there was a nearly seamless transition from Take Care to Advocate Clinics at Walgreens, with the Clinics closed for only two days, May 16 and 17, 2016, while the facilities were cleaned, and new signs, new freezers, and new computers were installed. Meanwhile, the APNs who were hired to staff the Clinics participated in a 2-day training/orientation about the Respondent and their positions with the Respondent.

The Respondent asserts that because the Advocate Clinics at Walgreens are part of a large, integrated health care network, and the Clinics operated under Take Care were not, there is insufficient continuity of operations. The Respondent emphasizes that the Clinics operated under Take Care were affiliated with Walgreens Stores, which is a large retail pharmacy chain that sells various food and household items, a business operation unrelated to the Respondent's integrated health care services. There is no dispute that the larger parent companies or networks of entities with which Take Care and Advocate Clinics at Walgreens are associated have distinct business purposes. However, this does not change my finding that the business of *the Clinics* remained essentially the same. The actual services rendered remain unchanged.

Significantly, from the employees' perspective, the job of the APNs in the Clinics remained nearly unchanged. The APNs testified consistently that their work remained essentially the same. (Tr. 147, 172, 214, 298–299, 364–365, 459.) Respondent's witnesses admitted that the APNs have the same duties and responsibilities they had at Take Care. (Tr. 605, 696–698.) The Respondent implemented some minor changes in day-to-day operations, which included new computer systems for checking-in patients, processing billing, tracking patient medical records, and accessing clinical and administrative information electronically, a change in several drugs that that the APNs would be allowed to administer, some of which were narcotics that required them to maintain specific licensing they did not use under Take Care, a planned change in the age of pediatric patients who could be seen (children could be seen at 18 months at Take Care and the Respondent planned to have APNs treat children as young as 6 months), and the Respondent hired a cleaning service to sweep and clean the Clinics in the evenings, tasks the APNs performed under Take Care. These changes were not significant in the overall scheme of things. They certainly were not significant enough to find a lack of substantial continuity of operations, where the Clinics otherwise functioned the same under both owners.

The employees are doing the same jobs under the same or very similar working conditions. As noted above, the operation of the Clinics was nearly the same, and the APNs performed their work under similar working conditions. As noted above, the nursing functions remain the same, with only minor changes to the actual services performed at the Clinics under the Respondent. The employees receive similar pay under the Respondent, in some cases slightly more, although they are paid as a percentage of a full-time equivalent salary, rather than by an hourly wage. I find this a distinction without a difference. The APNs take on extra shifts, and many are identified as "zero" hour employees and they are paid a percentage of a weekly wage for the actual work performed. This is the same type of pay method as an hourly rate. They work similar hours under similar circumstances: The APNs work with a medical assistant, and sometimes one other APN, depending on the size of the Clinic in the store. This staffing structure

has not changed. They function independently, having some limited contact with managers who are their administrative supervisors and medical doctors with whom they have collaborative agreements, who are their clinical supervisors for purposes of their licensing, but not their employment relationship. Although the individuals performing the administrative and clinical oversight are different under the Respondent from those under Take Care, the level and nature of the supervising is remarkably similar. The APNs continued performing the same tasks, in the same exam rooms, using the same physical set up, equipment, instruments, and supplies.

Under the Respondent, the patients may have access and be connected to a larger network of services once they are treated in the Clinics, but the work performed by the APNs at the Clinics is the same and the services provided are nearly identical as those under Take Care. As Dr. Sacks, testified, the Advocate Health Network may be seeking to expand and improve its population health model by operating these Clinics in Walgreens stores in neighborhoods where clients may not have easy access to other points of care within the network, but that advantage to the Respondent does not change the services performed by the APNs or their work experience.

Substantial continuity of operations is further supported by the evidence showing that the APNs required and received very little training before the Advocate Clinics at Walgreens opened. They had 2 days of orientation while the Clinics were cleaned and set up as Advocate Clinics. This pre-opening orientation involved primarily administrative information regarding the "Advocate culture," the Respondent's computer system, and the Respondent's expectations. There was no substantive clinical training over those days. This is not surprising, considering these APNs are licensed to practice as nurse practitioners, and their clinic skills are subject to training and oversight related to their licenses. The clinical changes projected and planned by the Respondent—changes in certain drugs, including narcotics that would be available for prescribing and an earlier age of treatment of pediatric patients—were not implemented immediately, and had not been implemented yet at the time of the hearing in this case, nearly 7 months after the Advocate Clinics at Walgreens opened. Some clinical training was made available to APNs over those months to accommodate these changes, which also was underway but not completed at the time of the hearing. The Respondent opened and operated the Advocate Clinics at Walgreens well before these projected changes were in place.

The testimony was inconsistent regarding whether and to what extent APNs at the Advocate Clinics at Walgreens could voluntarily take shifts at the various other points of care within the expansive network of AHHC. Although some APNs had taken shifts at other practices over the course of the 7 months since the Advocate Clinics at Walgreens opened, it was unclear whether all the APNs generally knew they could take these shifts or how to go about it. APNs working in the Clinics regularly took shifts at other Advocate Clinics at Walgreens, and a small number took shifts at several Immediate Care Clinics also operated by the Respondent; at least one employee, Roger Farquharsen, testified that he obtained on-the-job training by following or shadowing another clinician at an ICC. This reflects that the APNs would be performing some work at the ICCs that is different from that performed at the Walgreen Clinics. As Take Care was not part of an integrated health network, taking shifts outside the Take Care Clinics was not available at the predecessor. However, the covering of shifts within the Clinics remained available to a similar extent as before.

Based on the above analysis, I find that the General Counsel has demonstrated a substantial continuity of operations between Take Care and the Respondent.

3. Does the historic unit remain an appropriate unit?

A remaining issue in the successorship analysis, which is related to substantial continuity of operations but a distinct issue, is the appropriateness of the bargaining unit. *A.J. Myers & Sons, Inc.*, 362 NLRB No. 51, slip op. at 9 (2015). The General Counsel and Union argue that the historic unit of APNs working in the 56 Walgreens Clinics remains an appropriate unit, and, in the alternative, that the unit combined with 8 or 9 APNs who work in the Respondents ICCs would also be an appropriate unit. The General Counsel further argues that the Respondent has failed to meet what is characterized as a heavy burden to show that the historic unit, which was Board-certified in 2011, is no longer an appropriate unit. *Paramus Ford, Inc.*, 351 NLRB 1019, 2023 (2007); *Cadillac Asphalt Paving Co.*, 349 NLRB 6, 9 (2007). The Respondent argues that the historic unit no longer remains an appropriate unit at the Respondent, because the employees working in the Advocate Clinics at Walgreens have joined its extensive network of health care practices and facilities that already employ 220 APNs, and that the only appropriate unit would be a unit of all the APNs throughout the network of over 360 APNs. It further challenges the presumption of appropriateness of the historical unit, and therefore the compelling nature of its burden to show that the unit is no longer appropriate.

It is the Board's policy to presume the appropriateness of an historical unit despite a change of ownership, unless the unit no longer conforms reasonably to standards of appropriateness. *Paramus Ford*, above. Based on its history of bargaining and the Board's community of interest standard, I find that the historical unit remains appropriate. The unit was certified by the Board as an appropriate unit in 2011. The Union established a bargaining history with Take Care regarding the unit, entering into a 3-year initial collective-bargaining agreement with Take Care in 2012. It engaged in negotiation for a successor agreement before the announcement was made in December 2016 that Take Care would cease operating the 56 Clinics in Walgreens stores and that the Respondent would begin operating the 56 Clinics in Walgreens stores thereafter. The Union and Take Care then entered an agreement covering unit employees until their employment ceased with Take Care in May 2016. I find these circumstances sufficient to support a finding of a presumption of appropriateness based on a history of bargaining. *Paramus Ford,* above; *Cadillac Asphalt*, above. See also, *A.J. Myers*, above, slip op. at 9.

The Respondent has not established that the unit is no longer appropriate. Although it asserts that a unit of APNs from the 56 Clinics at Walgreens is not appropriate, it failed to produce evidence to show in any detail what the work performed by the APNs in other settings was like, and significantly, how it was similar or different from the work of APNs in the Clinics in Walgreen stores. The record addresses some working conditions: testimonial evidence suggests that all employees at AMG receive the same benefits, and that the pay system was the same (although the actual salaries of employees vary). It is clear that in other settings, including in the ICCs, the APNs perform more services and treatments than at the Clinics at Walgreens. The Clinic hours set are different from other settings. Although all APNs (and other clinicians) wear lab coats, those in the Walgreens Clinics all wear white coats, while there are three colors to choose from in other settings. The holiday schedule is different in the Clinics at Walgreens

compared to other settings, including the ICCs. (GC Exh. 8.) The scheduling system appears to be different also—although the Respondent asserted that APNs working in the Clinics at Walgreens had access to schedule information showing open shifts in settings other than ICCs, no APN who testified confirmed that, and those who testified were not familiar with the scheduling practice or options other than at the Walgreens Clinics and ICCs. The record establishes that there was little interaction between the APNs in the Clinics and APNs in the other settings, except in circumstances when a few individuals took shifts in other settings. See Respondent Exhibit 26, showing that only 9 of the 143 APNs working in the Advocate Clinics at Walgreens (about 6 percent) had ever taken shifts at the ICC, and only 4 of the 143 APNs (about 3 percent) had taken shifts at the family practices. These numbers do not reflect a substantial interchange among employees, particularly considering it all took place after the Respondent failed to recognize the Union.

It is well established that to be found appropriate, a unit does not have to be the only appropriate unit or even the most appropriate unit. On this record it has not been established that the APNs in the ICCs have an overwhelming community of interest with the APNs in the Clinics at Walgreens such that their inclusion in the unit would be required. I note, for the purposes of this analysis, I have examined the status of the unit in May 2016, when the Respondent began operations with a full complement of employees and when the Union made a demand for recognition.[15] Changes in working conditions in the bargaining unit since May 2016, including any expansion of interchange between employees in different units, do not affect my findings regarding the scope of the unit or inclusion in the unit at that time. Any changes in terms and conditions of employment occurring after an unlawful refusal to recognize and bargain with the Union would not affect my assessment of the status of the unit in May 2016. Moreover, no party

[15] Respondent presents some creative counting exercises in its brief in an attempt to suggest that the Take Care employees did not make up a majority of the Advocate Clinic at Walgreens unit. I find this presentation immaterial for several reasons. First, as discussed above, the dispositive question in this case is the number of former Take Care employees in the bargaining unit when Advocate opened its clinics in May 2016. The parties stipulated as to the number of APNs hired to work in the Walgreens stores, and the number of those hired from the Take Care unit. I rely on that stipulation. Who was still working in December 2016 is not dispositive of the status of the unit on May 16, when the Respondent took over the clinic business. Similarly, the fact that certain employees were listed as "zero" hour employees in December 2016 is not dispositive of their status on May 16. Moreover, the fact that certain employees are listed as "zero" hour employees does not establish that they are not regular part-time employees. That question would be answered by payroll records or scheduling records showing the hours these employees actually work. Said payroll records would be in the Respondent's possession, and therefore, I will not infer from the December 2016 data that any of the Take Care employees hired by Advocate to work in the Walgreens stores should be excluded from the unit based on limited hours worked. Moreover, per diem nurses (PRNs) are expressly included in the unit description.

Second, the premises and execution of Respondent's mathematics are flawed. The Board gives each employee in the bargaining unit one vote—thus, a convoluted counting of support that assigns employees only a partial vote based on their part-time status is inconsistent with the Board's fundamental policies. Moreover, the actual vote tally in 2011 has little substantive value 5 years later, considering the circumstances of their having been two collective-bargaining agreements in place since the election, and of course, a transfer of ownership and management of the unit in the meantime, leading to the failure to recognize and bargain with the Union, which is the subject of this litigation.

presented sufficient evidence to establish in detail the terms and conditions of employment of the APNs in the ICCs for me to make that determination on this record. Notably, the Respondent failed to call any APNs who work outside the Clinics to establish what those APN's do on a daily basis.

B. Failure and Refusal to Recognize and Bargain with Union in Violation of 8(a)(5)

The parties do not dispute that the Respondent has failed and refused to recognize and bargain with the Union. The Respondent argues, however, that its actions and the Union's actions following the demand for recognition and bargaining insulate the Respondent from liability. This contention lacks merit.

The contention that the demand for recognition did not make clear what group of employees the Union claimed to represent is specious. The Union's letter clearly refers to the unit of APNs at Take Care, not to the entire AHHC network. Therefore, the Respondent cannot rely on its assertion that the Union failed to clarify the scope of the unit.

Moreover, upon the filing of the charge, the Respondent should have been on notice that the Union had not given up its claim to represent the APNs by failing to respond to the Respondent's response to its demand for recognition and bargaining.

For the reasons discussed above, the Respondent is a successor employer according to *Burns*, above, consistent with the Board's recent case, *UGL-UNICCO*, above. The record is clear that the Respondent hired a majority of its employees in the appropriate unit of employees who were represented by the Union at the predecessor, Take Care. By failing and refusing to recognize and bargain with the Union upon request, the Respondent violated Section 8(a)(5).

C. Can the Respondent Avoid its Obligation to Recognize and Bargain with the Union Based on Assertions that the Union Lacked Majority Support?

1. Applicable law

In *UGL-UNICCO*, above, the Board reinstated the "successor bar" rule, which applies where a successor employer has abided by its legal obligation to recognize an incumbent union, and the "contract bar" is inapplicable. *Empire Janitorial Sales*, above, slip op. at 11–12. "In such cases, the union is entitled to a reasonable period of bargaining, during which no question concerning representation that challenges its majority status may be raised through a petition for election raised by employees, by the employer, or by a rival union; nor, during this period, may the employer unilaterally withdraw recognition from the union based on a claimed loss of majority support, whether arising before or during the period." Id., quoting *UGL-UNICCO* at 808. The successor bar rule was established to preserve industrial peace because a change of ownership places the union in a peculiarly vulnerable position where everything that the union achieved through collective-bargaining with the predecessor is at risk of being eliminated, and that risk arises at a time when employees might be inclined to shun support for the union. Id. The Board defined a "reasonable period of bargaining," finding that where the successor employer has expressly adopted existing terms and conditions of employment as the starting point for

bargaining, without making unilateral changes, "the reasonable period of bargaining shall be 6 months, measured from the date of the first bargaining meeting between the union and the successor employer." Id., citing *UGL-UNICCO* at 809. However, "where the successor employer recognizes the union, but unilaterally announces and establishes initial terms and conditions of employment before proceeding to bargain," the reasonable period of bargaining shall be a minimum of 6 months and a maximum of 1 year, measured from the date of the first bargaining meeting between the union and the successor employer. Id.

2. Analysis

The Respondent argued that it was not obligated to recognize and bargain with the Union because upon receipt of the demand the Union lacked majority support.[16] This argument fails as a matter of law. *Empire Janitorial Sales*, above, slip op. at 12. The successor bar set forth in *UGL-UNICCO* entitles a Union to a reasonable period of time free from challenge of its majority status (from 6 months to 1 year, depending on the circumstances). Although *UGL-UNICCO* states that the bar is triggered when a successor employer abides by its obligations to recognize an incumbent union, the successor bar also applies in this case where the Respondent never abided its obligation to recognize the Union. *Empire Janitorial Sales*, above, slip op. at 12. The Board's decision in *UGL-UNICCO* compels this finding, as allowing a challenge to the Union's majority status would reward the Respondent for unlawfully failing and refusing to recognize and bargain with the Union.[17] Id.

[16] The Respondent also argues that, even as a successor employer, it ought to be permitted to assert a challenge to majority status that the predecessor might have asserted. That argument is misplaced here, as there was a collective-bargaining agreement in place between Take Care and the Union when the transition occurred turning possession of the Clinics over to Advocate. Thus, this novel theory is not viable on this record, as Take Care, the predecessor, was barred from asserting a challenge to majority status by the Board's contract-bar doctrine. Thus, if the Respondent "stands in the shoes" of the predecessor, it is not privileged to challenge majority status.

[17] The Respondent's argument that it should have been permitted to subpoena and elicit evidence of loss of majority support in support of its theory that the Union did not have majority support also fails. I excluded such evidence as irrelevant. I permitted the Respondent to submit evidence showing what the Respondent relied upon to determine it would refuse to recognize the Union, either because it showed that the Union lacked majority support or that it convinced the Respondent that there was a reasonable uncertainty as to the retention of majority support. Although this evidence was not material to the issues in this case under current Board law, I determined that, unlike the solicitation of evidence of union support from employees and the Union, the presentation of this evidence which is already in the Respondent's possession, did not have the same tendency to undermine employees' protected union activity. The counsel for the Respondent stated that the Respondent wished to challenge, if applicable, the Board's holding in *Levitz Furniture*, 333 NLRB 720 (2001), as well as the Board's holding in *UGL-UNICCO*, above. I leave to the Board the consideration of whether to reconsider these, or any other doctrines. I am bound by the Board's current precedent.

The evidence the Respondent relied on to show lack of majority support was limited to the following: (1) a copy of what appeared to be a Facebook page conversation among several employees, the origin of which the Respondent's witness repeatedly refused to established, and which I did not admit for the truth of matters asserted, as I find it to be unreliable hearsay (R. Ex. 38); (2) a document from the Union's public website in which there were suggestions that few unit members paid Union dues (R. Exh.30); and (3) the tally of ballots from the 2011 union election (R. Exh. 36). Moreover, the Respondent failed to establish how the decision not to recognize the Union was made, and failed to call the deciding

D. Statements by Supervisors Alleged to Violate 8(a)(1)

1. Applicable law

Section 8(a)(1) makes it unlawful for an employer, through actions, statements, or rules, to interfere with, restrain, or coerce employees in the exercise of Section 7 rights. See *Hills & Dales General Hospital*, 360 NLRB 611, 615 (2014); *Brighton Retail Inc*., 354 NLRB 441, 447 (2009). The Board will evaluate whether an employer's conduct or statements have a reasonable tendency to interfere with, restrain, or coerce employees. *Hills & Dales*, above; *KenMor Electric Co.*, 355 NLRB 1024, 1027 (2010) (noting that the employer's subjective motive for its action is irrelevant).

To determine whether an employer's questioning of an employee about union activity violates 8(a)(1) the Board considers whether, under all the circumstances, the interrogation would reasonably tend to restrain, coerce, or interfere with Section 7 rights. *Rossmore House*, 269 NLRB 1176, 1178 fn. 20 (1984), affd. sub nom. *Hotel Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). Among the factors considered are: (1) the questioner's identity; (2) the place and method of interrogation; (3) the background of the questioning and the nature of the information sought; and (4) whether the employee is an open union supporter. *Scheid Electric*, 355 NLRB 160 (2010); see also *Bourne v. NLRB*, 332 F.2d 47, 48 (2d Cir. 1964) (above factors described). I find that the under all the circumstances, questioning of Chambers was coercive and violated Section 8(a)(1) of the Act.

2. Analysis

Based on the totality of the circumstances, including my finding that Chambers' testimony was generally credited, I find that Kranz' questioning of Chambers violated Section 8(a)(1). Kranz is Chambers' direct supervisor. The fact that they became friendly does not change my analysis, where, here, the statements were made well before the two had developed a relationship, having only spoken a few times before that first week or two of the operation of Advocate Clinics at Walgreens. The questioning was done on the work phone, during work time, and in manner that implied it could be disloyal for Chambers to support the Union, "Is there something I need to be worried about?" and when Chambers responded that there was not, Kranz replied that she "was

---

official, Bonnie Kreischer, vice president, human resources at AMG, to explain the decision or what evidence was relied upon. Although the human resources director testified that he contributed to the decision, he admitted that his contribution was partial and his testimony about the decision relied substantially on his simultaneous review of Kriescher's letter (GC Exh. 2(b).) I find that this evidence does not establish even a "reasonable uncertainty" as to majority support within a unit of 165 employees at the time the decision to refuse recognition was made. See, generally, *Allentown Mack Sales & Svs., Inc. v. NLRB*, 522 U.S. 359 (1998). Therefore, the evidence could not have met the significantly higher standard of demonstrating by objective evidence an actual loss of majority support as required by *Levitz Furniture,* above. Thus, even if the Board considered the presumption of majority support in this case to be a rebuttable presumption, the Respondent failed to establish that it had valid evidence of either an actual loss of support or of a reasonable uncertainty of continued support when it chose to reject the Union's demand for recognition and bargaining.

just checking to make sure." The questioning was clearly about union activity, in that Kranz began the questioning by asking Chambers, "what do you know about what's going on with the Union?" There is no showing that Chambers was known to be a union supporter, and the conversation was initiated by Kranz. Chambers answered in a manner that was somewhat evasive, indicating she experienced the questioning as uncomfortable. Based on all of the above, I find that Kranz' questioning of Chambers violated 8(a)(1).

The General Counsel also alleges that the questioning of Hackl by Kranz violated Section 8(a)(1). Although I have found above that the credited testimony corroborates Kranz' method of inquiry, rebutting Kranz' representation that the inquiry was in person, I do not find this questioning violative due to the General Counsel's representation at the hearing that implied she was not going to allege this statement as a violation. Counsel for Respondent had called Kranz and I had dismissed her, leaving the Respondent at a disadvantage to respond to the allegation.

I further find, based substantially on my crediting of Darley's testimony over Pertzborn's, that Pertzborn's statement asking Darley to refrain from signing anything from the Union violated Section 8(a)(1). Pertzborn approached Darley at work, at a time when she was returning from leave and was a bit flustered about the use of the new computer system, and in a manner that was physically awkward or odd. He is her direct administrative supervisor. She appeared to try to avoid engaging in a discussion about the Union with her manager. His instruction not to sign anything from the Union after she twice expressed she did not feel comfortable talking to him about the Union would be coercive to a reasonable employee. I find based on the totality of the circumstances that Pertzborn's instruction was objectively coercive in violation of Section 8(a)(1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, Advocate Health and Hospitals Corporation d/b/a Advocate Medical Group is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and is a health care institution within the meaning of Section 2(14) of the Act.

2. The Union has been a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent's Practice Managers, Rachel Kranz and Eric Pertzborn, are supervisors of the Respondent within the meaning of Section 2(11) of the Act and Respondent's agents within Section 2(13) of the Act.

4. Take Care Health, Inc. operated immediate care healthcare clinics located in Walgreens stores and was an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act.

5. On May 16, 2016, the Respondent began operating immediate care healthcare clinics located in the same 56 Walgreen stores previously operated by Take Care Health, Inc. until May 14, 2016.

6. From June 14, 2011, to May 14, 2016, the Union was the exclusive representative for purposes of collective bargaining of the following appropriate unit of employees of Take Care Health, Inc. within the meaning of 9(a) and (b) of the Act:

> All full-time and regular part-time nurse practitioners (NPs) including PRN nurse practitioners (PRNs) in the following Illinois counties: Cook, DeKalb, DuPage, Kane, Kendall, Lake, McHenry, Peoria, Tazewell, and Will, but excluding all other persons including, but not limited to, physicians, all other professionals, technical employees, maintenance, business office, clerical and other staff employees, and supervisors, managers and guards as defined in the National Labor Relations Act, as Amended.

7. Since May 18, 2016, the Respondent has been a successor employer of the employees formally employed by Take Care Health, Inc. in the 56 immediate care healthcare clinics located in Walgreens stores in the bargaining unit described above.

8. Since May 18, 2016, the Union has remained the exclusive representative for purposes of collective bargaining of the following appropriate unit of employees of the Respondent within the meaning of 9(a) and (b) of the Act:

> All full-time and regular part-time nurse practitioners (NPs) including PRN nurse practitioners (PRNs) employed by Advocate Health & Hospitals Corporation d/b/a Advocate Medical Group performing work in healthcare clinics located in Walgreens stores in the following Illinois counties: Cook, DeKalb, DuPage, Kane, Kendall, Lake, McHenry, Peoria, Tazewell, and Will, but excluding all other persons including, but not limited to, physicians, all other professionals, technical employees, maintenance, business office, clerical and other staff employees, and supervisors, managers and guards as defined in the National Labor Relations Act, as Amended.

9. On May 17, 2016, the Union requested recognition and that Respondent bargain about the terms and conditions of employment of the bargaining unit, which the Respondent responded to on May 19, 2017.

10. Since May 19, 2016, the Respondent has failed and refused to recognize and bargain with the Union as the exclusive collective-bargaining representative of its nurse practitioners performing work in immediate care healthcare clinics locates in Walgreens stores in violation of Section 8(a)(5) and (1) of the Act.

11. In May 2016, the employer coercively interrogated an employee about her union activity or support and interfered with another employee's union support or affiliation in violation of Section 8(a)(1) of the Act.

REMEDY

Having found that the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, the Respondent shall be ordered to cease and desist from engaging in such conduct and take certain affirmative action designed to effectuate the policies of the Act. Most importantly, in order to restore the status quo ante, in light of Respondent's failure and refusal to recognize and with the Union, Respondent must recognize and bargain with the Union for a reasonable period of time of no less than 6 months as the bargaining representative of unit employees. An affirmative bargaining order is a reasonable exercise of the Board's broad discretionary remedial authority. *Caterair International,* 322 NLRB 64, 64–68 (1996).

The Respondent must bargain on request with the Union as the exclusive collective-bargaining representative of employees in the appropriate bargaining unit and embody any understanding reached in a signed agreement. The Respondent is required to meet to negotiate with the Union at reasonable times and reasonable places.

The restoration of the status quo ante requires that the Respondent must, on request from the Union, continue the terms and conditions of employment in effect on May 18, 2016.

The Respondent shall post an appropriate informational notice, as described in the attached appendix. This notice shall be posted in the Employer's facility or wherever the notices to employees are regularly posted for 60 days without anything covering it up or defacing its contents. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 19, 2016. When the notice is issued to the Employer, it shall sign it or otherwise notify Region 13 of the Board what action it will take with respect to this decision.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended Order.

ORDER

The Respondent, Advocate Health and Hospitals Corporation, d/b/a Advocate Medical Group, Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative for the following bargaining unit of its employees:

All full-time and regular part-time nurse practitioners (NPs) including PRN nurse practitioners (PRNs) employed by Advocate Health & Hospitals Corporation d/b/a Advocate Medical Group performing work in healthcare clinics located in Walgreens stores in the following Illinois counties: Cook, DeKalb, DuPage, Kane, Kendall, Lake, McHenry, Peoria, Tazewell, and Will, but excluding all other persons including, but not limited to, physicians, all other professionals, technical employees, maintenance, business office, clerical and other staff employees, and supervisors, managers and guards as defined in the National Labor Relations Act, as Amended.

(b) Interrogating employees about their union activity or support.

(c) Interfering with employees' union activity or affiliation by asking them not to sign anything in support of the Union.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action which is necessary to effectuate the purposes of the Act.

(a) Recognize the Union as the exclusive collective-bargaining representative of the bargaining unit employees described above.

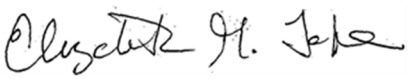
(b) Upon request, bargain with the Union as the exclusive bargaining representative of unit employees about terms and conditions of employment, and if an agreement is reached, embody the understanding in a signed agreement.

(c) Within 14 days after service by the Region, post at its facilities in each of the 56 clinics located in Walgreens stores in and around Chicago, Illinois, copies of the attached notice marked "Appendix."[18] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, or other electronic means, if the Respondent customarily communicates with its employees by such means. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings. The Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at that facility at any time since May 16, 2016.

[18] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(d) Within 21 days after service by the Region, file with the Regional Director of Region 1 a sworn certificate of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply with the provision of this Order.

Dated at Washington, D.C., September 11, 2017.



Elizabeth M. Tafe
Administrative Law Judge

APPENDIX

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO:

Form, join, or assist a union;
Choose representatives to bargain with us on your behalf;
Act together with other employees for your benefit and protection;
Choose not to engage in any of these protected activities.

WE WILL NOT do anything that prevents you from exercising these rights.

WE WILL NOT fail and refuse to recognize and bargain with the Union as the exclusive collective-bargaining representative of our employees in the bargaining unit of APNs described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL NOT coercively interrogate employees about their union activity or support.

WE WILL NOT interfere with employees' union activity or affiliation by asking them not to sign anything in support of the Union.

WE WILL recognize and, on request, bargain with the Union as the exclusive collective-bargaining representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time nurse practitioners (NPs) including PRN nurse practitioners (PRNs) performing work in immediate care healthcare clinics located in Walgreens stores in the following Illinois counties: Cook, DeKalb, DuPage, Kane, Kendall, Lake, McHenry, Peoria, Tazewell, and Will, but excluding all other persons including, but not limited to, physicians, all other professionals, technical employees, maintenance, business office, clerical and other staff employees, and supervisors, managers and guards as defined in the National Labor Relations Act, as Amended.

ADVOCATE HEALTH AND HOSPITALS CORPORATION,
D/B/A ADVOCATE MEDICAL GROUP
(Employer)

Dated: _____ By: _____
(Representative (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.
Dirksen Federal Building, 219 South Dearborn Street, Room 808, Chicago, IL 60604-1443
(312) 353-9158, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/13-CA-179223 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE
THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (312) 353-7170.